

IN THE MATTER OF	:	BEFORE THE
MARSHALEE WOODS	:	HOWARD COUNTY
LIMITED PARTNERSHIP	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-029C

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DECISION AND ORDER

On October 10, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Marshalee Woods Limited Partnership, Petitioner, for a conditional use for age-restricted adult housing in the R-20 (Residential – Single) and R-12 (Residential – Single) Zoning Districts, filed pursuant to Section 131.N.1 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Richard B. Talkin, Esquire, and Sangh Oh, Esquire, represented the Petitioner. John Liparini and Mickey Cornelius testified on behalf of the Petitioner. Sheila Fike testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property known as 6374-6414 Montgomery Road and 6481-6489 Marshalee Drive, which is located in the 1st Election District on the west side of Marshalee Drive and south side of Montgomery Road in Elkridge (the "Property"). The Property

is referenced on Tax Map 37, Grid 5, as Parcel 320, Parcel 354, Lots 13-15, and Parcel 682, Lots 149-153 and Parcel A.

2. The Property is irregular in shape and contains about 11.4 acres, with approximately 550 feet of frontage on Montgomery Road to the north and about 1,250 feet of frontage on the new extension of Marshalee Drive to the east. The Property is about 650 feet wide at its greatest width at its north end, narrows to about 350 feet in the center of the Property, and further narrows to a point at its southern end. The Property is unimproved and is partially wooded. The Property is generally level along Marshalee Drive, then rises up to the northwest and slopes down to the south.

The southern portion of the Property (3.85 acres) is zoned R-12, while the northern portion (7.54 acres) is zoned R-20.

3. Vicinal properties are zoned R-20 and include:

(a) To the north of the Property across Montgomery Road are several residential lots improved with single-family detached homes fronting on Montgomery Road.

(b) To the east of the Property across Marshalee Drive is the Marshalee Woods subdivision of two-story single-family detached homes with frontage on, or access to, Sawgrass Court and Deborah Jean Drive.

(c) To the south of the Property are wooded open space lots; beyond these lots are single-family detached dwellings fronting on Golden Fern Court.

(d) To the west of the Property is Lot 9, a residential lot with a single-family dwelling fronting on Montgomery Road, and Lots 2, 3 and open space lot 4 of the Walter and Laverne Brown subdivision.

4. The Petitioner proposes to develop on the Property an age-restricted adult housing community. The development will consist of one single-family detached dwelling unit and 51 attached and semi-detached dwelling units arranged in 18 structures of between two and six units each. Fourteen of the units will be located along the wider northern portion of the Property 40 feet from the north lot line. These units will be arranged in two groups of six units and one group of two units and will back to Montgomery Road. Ten units, in five groups of two units each, will be located along the east lot line 40 feet from, and backing on, Marshalee Drive. According to the original petition, an 8-unit apartment building will be located in the center of the northern portion of the site. A two-unit block will be situated immediately west of the apartment building and two more two-unit blocks will be located southwest of this structure, about 50 feet from the west lot line. An existing single-family dwelling, located in the northwest portion of the Property and situated about 15 feet from the west lot line, is designated as an additional age-restricted adult housing unit.¹

Thirteen more units will be located in the southwest portion of the site. A two-unit block will be situated in a center island, a two-unit and four unit block will be located south of and facing the island, and a two-unit and three-unit block will be located north of and facing the island. The backs of these units will be at least 50 feet from the west lot line.

To the east of the center island will be a 1,080 square foot structure designated as a community building. Immediately behind the community building will be an “outdoor area.”

Each unit will be a villa-style, two-story townhouse, about 32 feet wide by 62 feet deep and

¹ The Petitioner requests that the existing single-family dwelling be considered part of the age-restricted adult housing community and subject to the restrictions of the conditional use.

34 feet high, with a two-car garage. Each unit will have about 2,225 square feet of floor space with a sunroom option. The homes will have first floor master bedrooms and universal design features for accessibility and adaptability for persons with disabilities. According to the original petition, six of the units will be designated as moderate income housing units.

Access to the Property will be gained via a paved drive located on Marshalee Drive about 600 feet south of the northeast corner of the site. The entrance drive will contain an island median creating one entrance lane and two exit lanes. The driveway will lead to an internal circulation of drive aisles and parking spaces. Eight unit spaces and 21 visitor spaces will be located in two parking areas north and south of the proposed apartment building. In addition, 8 parking spaces will be located in two parking areas north and south of the community building. Each dwelling unit will have two garage parking spaces and two driveway parking pads. Parking for the entire development will total 213 spaces.

Storm water management facilities will be located in the northeast and southeast portions of the lot, as well as on either side of the driveway entrance. A walking trail will extend around the southern and western perimeters of the site. The conditional use plan shows existing vegetation to remain along most of the western boundary of the Property and a landscape buffer will be installed along the remainder of the western boundary, the entire northern boundary, and the entire eastern boundary. Street trees will be planted along the interior roadways. The total open space area will encompass 4.51 acres.

The development will be subject to a condominium regime with covenants restricting occupancy to households having at least one member who is 55 years of age or older.

5. The Property will be served by public water and sewer facilities. The 2000 General Plan designates the Property as “Residential Area.” Marshalee Drive is proposed as a minor arterial road with 38 feet of paving within an 80-foot right-of-way with a 40 mph speed limit. Sight distance from the proposed entrance is over 600 feet in each direction.

6. John Liparini, a principal of the Petitioner, testified that the petition was originally filed under conditional use regulations which would have required the apartment building and a minimum of 50 units. As result of recent changes in the regulations, known as “Comp Lite,” the Petitioner proposes to amend its petition to replace the apartment building with four more villa-style units. This amendment will reduce the total number of units requested to 48.²

Mr. Liparini testified that the duplex units will be similar in scale, materials and design to the single-family detached dwellings in the area. He stated that a landscape screen wall will be erected on the east side of Marshalee Drive, as shown on the conditional use plan. The owners of the existing house desire to be part of the community, but if the house does not conform to the conditional use criteria, the Petitioner will withdraw it as part of the conditional use petition.

Mr. Liparini stated that a four-story condominium complex is located south of the Property. He stated that the universal design features of the units will include garage door openers, lever door handles, three foot wide exterior doors and hallways, closet shelves at adjustable heights, outlets at least 18” above floors, thermostats at easy-to-read locations, multi-level countertops, and glass doors or open shelves in upper cabinets. The units within each block will be offset about two feet from

² “Comp Lite,” or the 2005 Continuation of the Comprehensive Zoning Plan, became effective July 28, 2006. Because the legislation has been challenged in Circuit Court, however, the Petitioner requested that both alternative plans be considered. I am only authorized to apply the law as it currently exists; consequently, this decision applies only the Petitioner’s amended plan.

each other in the front and rear. The outdoor area designated on the conditional use plan will be a patio area. He stated that under the restrictions the community building will be limited to use by residents. There will be five MIHU units. The minimum landscaping requirements will be supplemented along Montgomery Road and Marshalee Drive.

7. Mickey Cornelius, a traffic engineer, testified that the 38' width of the Marshalee Drive paving is sufficient to allow northbound vehicles to make safe left turns into the Property. He also stated that traffic is more likely to access the Property from Montgomery Road. He testified that the trips generated by the proposed use will be fewer in the morning peak hours and only slightly more in the evening peak hours than those that would be generated by twenty single-family homes.

8. Ms. Fike testified that she believes the proposed development is not set back far enough from the intersection of Montgomery Road and Marshalee Drive. She stated that there are already three existing 55-and over communities within a one-mile radius of the Property. She noted that two of these developments have long entrance drives and the buildings are set back a further distance from the public road than the proposed development. She stated that the proposed development will result in a high concentration of these communities. She stated that the proposed development is not compatible with the existing homes in the area and is too dense as compared to the surrounding single family homes on 1/3 acre lots. She feels the best use of the Property would be single-family homes.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan: The Howard County General Plan designates the area in which the Property is located as a “Residential Area.” The proposed use is residential in nature and of relatively low intensity. The proposed 48 dwelling units will be centrally located on the 11.4-acre lot and well buffered by landscaping. The age restrictions for the units will result in a lower intensity of use than normally associated with non-restricted attached and semi-detached dwellings. The site has direct access to Marshalee Drive, a minor arterial road. Because the development will be located within an area characterized by a mix of high and medium density residential properties, it is in harmony with Community Conservation and Enhancement Policy No. 5.7, which recommends that “infill development will be compatible with existing neighborhoods.” Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed age-restricted adult housing development has adverse effects in the R-20 and R-12 zones. The proper

question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-20 and R-12 districts.

For the reasons stated below, I conclude that the Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with age-restricted adult housing in the R-20 and R-12 districts:

1. Physical Conditions. The proposed development will consist of typical residential uses of a relatively low intensity, given the age restrictions required by the conditional use. The dwelling units will be centrally located and face inward, and parking will be located in garages or on parking spaces located at the center of the site. The only outdoor activities proposed will be passive. The development will be amply landscaped and buffered. A landscape screen wall will be installed on the east side of Marshalee Drive to further buffer the Property from the nearby homes to the east. The use will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with an age-restricted adult housing community in an R-20 zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. The proposed new structures will be centrally located on the Property and will face inward. The size and height of the structures will be modest and comparable to the single-family homes in the area. The dwellings and the community center will be set back at least 50 feet from the residential community to the west and will be well buffered by existing or installed landscaping on all sides. Therefore, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or

discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner will provide a two-car garage and a parking pad for two additional vehicles for each of the 48 attached and semi-detached dwellings in the development. In addition, eight parking spaces will be provided near the community center within the development, for a total of 213 parking spaces. The parking areas and driveways will be located in the center of the site and screened by the buildings, landscaping and distance. No refuse areas are proposed. Consequently, parking areas and driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The proposed access road will provide safe access and has adequate sight distance in both directions. The traffic generated by the use will be relatively low in intensity. Given the width of the Marshalee Drive paving, no deceleration or acceleration lanes are needed. Consequently, the proposed driveway meets the requirements of Section 131.B.2.d.

B. Specific Criteria for Age-Restricted Adult Housing (Section 131.N.1).

1. As amended, the petition proposes 47 units of attached and semi-detached dwelling units and one single-family detached dwelling unit. These unit types are permitted in developments of less than 50 units in the R-20 and R-12 zones under Section 131.N.1.a(1).

2. The Petitioner proposes to construct 48 dwelling units, in excess of the minimum of 20 units required by Section 131.N.1.a(2).

3. Under Section 131.N.1.a(3), based on the net acreage of the two zoning districts, the maximum permitted number of units on the Property is 59. The Petitioner proposes 48 units.

4. The Petitioner proposes to retain the existing vegetation along most of the western boundary of the Property and install a landscape buffer along the remainder of the western boundary, the entire northern boundary, and the entire eastern boundary. Street trees will be planted along the interior roadways. The minimum landscape requirements will be supplemented along Marshalee Drive and Montgomery Road. In addition, the buildings near the perimeter of the development will be similar in scale, materials and architectural details to neighboring dwellings. Consequently, the landscape character of the site will blend with adjacent residential properties in accordance with Section 131.N.1.a(4).

5. All structures will be no more than 34 feet in height. All structures will be at least 40 feet from public street rights-of-way and adjoining residential lots, except for the single-family home designated as Unit 28, which is only 15 feet from the west side lot line. Unit 28 does not comply with the setback requirement of Section 131.N.1.a.(5)(b)(ii). Consequently, this structure may not be considered part of the age-restricted adult housing conditional use. It may remain, however, as a use permitted as a matter-of-right in the R-20 zone (a single-family detached dwelling).³

According to Section 131.N.1.a(5)(g), a group of single-family attached dwellings may not exceed 120 feet in length. The Petitioner has proposed two groups of six unit blocks in the northern portion of the site that will be approximately 192 feet long. Under Section 131.N.1.a(5)(g), the

³ Contrary to the Petitioner's assertion, this unit cannot be considered a "noncomplying structure" because it is not a structure that "does not comply with the current bulk requirements." See Section 128.B. It in fact complies with the R-20 bulk requirements. The fact that it already exists does not exempt it from the special conditions of the proposed conditional use.

Hearing Examiner may approve a greater length, up to 200 feet, based upon architectural design that mitigates the visual impact of the increase length. In this case, the units are of relatively modest size and will be offset to reduce the monolithic impact of each block of homes. In addition, the units will back to a large public street and will be amply buffered by landscaping. Consequently, I approve the increased length of these structures.

In all other respects, the remaining 47 units comply with the bulk requirements of Section 131.N.1.a(5).

6. The open space area of the site will encompass 4.51 acres, or 39.5% of the Property, which exceeds the minimum of 35% required by Section 131.N.1.a.(6). The open space will include pathways for the residents and will be protective of natural features.

7. Section 131.N.1.a(7) does not apply because accessory uses are not proposed.

8. The petition proposes a community building of 1,080 square feet for 47 units, which exceeds the 940 square feet required by Section 131.N.1.a(8).

9. No loading or trash storage areas are proposed for the amended petition, so Section 131.N.1.a(9) does not apply.

10. The development will not be constructed in phases, so Section 131.N.1.a(10) does not apply.

11. The individual units will be subject to condominium covenants restricting occupancy to households having at least one member who is 55 years or older, in compliance with Section 131.N.1.a(11).

12. All open space, common areas and improvements will be managed and maintained by

the condominium association in compliance with Section 131.N.1.a(12).

13. The petition contains floor plans for the units and a description of interior features that incorporate universal design principles to be accessible and adaptable for residents with disabilities and/or with limited mobility and/or other age related functional limitations. Each residence will have access to sidewalks and /or parking pads adjacent to the garages of each residence, in accordance with Section 131.N.1.a(13).

14. At least 10%, or 5, of the units will be moderate-income housing units, as required by Section 131.N.1.a(14).

15. Section 131.N.1.a(15) does not apply.

III. Opposition Testimony.

Once a petitioner presents sufficient evidence establishing that its proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, it is then incumbent upon those opposed to the petition to show that the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995). While those in opposition in this case expressed concerns about the potential impact of the change in the use of the property, the evidence placed before me does not sufficiently demonstrate any adverse effects unique or different than those ordinarily associated with an age-restricted adult housing development in the R-20 and R-12 districts.

Much of the testimony presented by those in opposition amounted only to unsupported

opinions and general conclusions that the development will cause adverse effects. Maryland courts instruct that the unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Because the Opposition's testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it little weight.

Moreover, even if I were to credit this testimony, the Opposition failed to show that these potential risks will impact this community *to any greater extent* than other communities in the R-20 or R-12 zones. The County Council has already determined that age-restricted adult housing developments are presumptively compatible with residential communities. In this case, there is insufficient evidence in the record to defeat this presumption. In other words, the Opposition failed to present sufficient evidence that any adverse effects would be unique or different from those ordinarily associated with an age-restricted adult housing development in the R-20 and R-12 districts.

Ms. Fike attempted to distinguish this proposal from others by pointing out that two nearby communities have longer driveways and are set back further from the public road. However, there is no evidence that these other communities are age-restricted adult housing conditional uses. Moreover, a sampling of only two such communities is insufficient to show that these attributes are typical of age-restricted adult housing conditional uses.

Ms. Fike also argued that the proposed development is too dense for the community of homes on 1/3-acre lots. The proposed density, however, is slightly more than one unit per four acres, or the

equivalent of homes on ¼-acre lots. It cannot reasonably be said that this density is out of character with the area.

ORDER

Based upon the foregoing, it is this **30th day of November 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Marshalee Woods Limited Partnership for a conditional use for age-restricted adult housing in an R-20 (Residential – Single) and R-12 (Residential – Single) Zoning Districts is hereby **GRANTED**;

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, as amended herein, and not to any other activities, uses, structures, or additions on the Property; and **subject to the following conditions**:

1. The single-family detached dwelling identified on the conditional use plan as Unit 28 may not be considered part of the age-restricted adult housing conditional use; it may remain, however, as a use permitted as a matter-of-right in the R-20 zone; and
2. The proposed apartment building identified on the original petition will be replaced with four villa-style units similar in design and size to the remaining units.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.